MISCELLANEOUS

School Employee Claims

I PURPOSE

The purpose of this section is to provide the legal basis for determining eligibility for Unemployment Benefits (UI) during a school recess period for claimants with base period wages earned in school or school supportive employment. Unemployment Insurance claims filed by individuals with these types of base period wages are referred to as "school employee" claims.

II REFERENCES

Federal Unemployment Tax Act (FUTA) Section 3304(a)(6)(A)(i) – (vi) contains federal legal provisions pertaining to UI benefit eligibility for school or school supportive employees.

California Unemployment Insurance Code (CUIC) Sections:

- 605 – Defines employment and a public entity.
- 634.5 – Describes excluded employment for UI purposes (pertaining to churches, nonprofit organizations, public entities and others).
- 642 – Excludes wages when work is performed by a student, or spouse of a student enrolled at that school, college, or university.
- 646 – Excludes work-study wages for UI purposes.
- 1253.3(a)-(i) – CUIC implementation of the FUTA 3304(a)(6)(A) pertaining to school employees.

California Code of Regulations Title 22:

- 642(a)(1) – California regulation defines what constitutes a school, college or university and addresses students working at a school while attending classes.

California Court Decisions:

- Board of Education of the Long Beach Unified School District, v. California Unemployment Insurance Appeals Board (1984) 160 Cal. App. 3d 674 – Discusses reasonable assurance for substitute teachers.

- Cervisi et al., v. California Unemployment Insurance Appeals Board (1989) 208 Cal. App. 3d 635 – Discusses reasonable assurance that is contingent on funding, enrollment, or program changes.

School Employee Claims

California Precedent Benefit (P-B) Decisions:

- P-B-124: Twenty percent reduction in wages is good cause for voluntary quit (January 20, 1972).
- P-B-412: Contract reduction of usual and customary scheduled work involving professional employees (May 6, 1980).
- P-B-417: Contract reduction of usually scheduled work involving nonprofessional employees (January 6, 1981).
- P-B-431: Reduction of usual work applies only in the first year the work is reduced (December 16, 1982).
- P-B-440: Contract completed involving a temporary employee (March 26, 1985).
- P-B-461: Comparable terms and conditions of work before and after a recess (April 12, 1988).
- P-B-472: Only one separation (May 23, 1991).

III KEY ELEMENTS

The following elements **must** be present for CUIC Section 1253.3 to apply:

A. **School Wages In The Base Period –** All or a portion of the base period wages must be based on school or school supportive employment.

B. **School Recess Period –** Benefits must be claimed during either a school recess, vacation or holiday period, or paid sabbatical. If the claimant works for more than one school employer, the recess period for each of the employers must be considered.

C. **Reasonable Assurance –** The claimant has reasonable assurance to return to work for a school employer at the end of a school recess, vacation or holiday period in the same or similar capacity.

The following are additional factors that must be considered when determining UI eligibility for school employee claims:

- Attachment to a school employer. The claimant must be either working for or expecting to work for a school employer.

- The type of work being performed:

    - Instructional, research and principal administrative capacity
    - Service performed in any other capacity than specified above

- The type of school employer:

  - Public school employer
  - Private, nonprofit school employer
  - Public entity school supportive employer
  - Nonprofit organization school supportive employer
  - For-profit employer

IV LAW AND POLICY

A. Background: Federal and State Law

An eligibility issue under CUIC Section 1253.3, otherwise known as a school employee issue, must be adjudicated when all of the following elements exist: the claimant has base period wages earned in school employment, the claimant requests UI benefits during a school recess, vacation, sabbatical, or holiday period, and the claimant has reasonable assurance to return to work with a school employer at the end of the recess period. The eligibility provisions pertaining to a school employee UI eligibility issue are derived from both federal and state laws and policies.

The federal law provides that all professional school employees be denied UI benefits based on school wages during a recess, holiday, or vacation period, or during a paid sabbatical, if the individual has reasonable assurance to return to work with a school employer at the end of the school recess period. The federal statute also allows the states to legislate denial of UI benefits to nonprofessional school employees during a recess, holiday or vacation period if the states choose to do so. California law provides for this denial provision to nonprofessional school employees during a school recess period under CUIC Section 1253.3.

The Federal Unemployment Tax Act (FUTA) Section 3304 (a)(6)(A), added to the FUTA in 1970, was based on the premise that claimants who work in school employment have no break in the employer/employee relationship while the school is in recess, if the claimant has reasonable assurance to return to work with a school employer in the next year or term. It requires states to pay UI compensation based on work performed for certain government entities and nonprofit organizations on the same terms and conditions as are applicable to other work covered by state law. However, the FUTA has exceptions to UI benefit eligibility for school employees who may be denied UI benefits between academic years or terms, or within academic years or terms (e.g., a vacation/holiday recess period). Hereinafter, “between academic years or terms” and “within academic years or terms” will be referred to as “school recess period.” (Refer to Section F for a full discussion of school recess period.)

MISCELLANEOUS

School Employee Claims

The following information paraphrases the FUTA Section 3304 (a)(6)(A)(i)-(vi).

(i) Professional school employees performing services in an instructional, research, or principal administrative capacity for an educational institution, shall not be paid UI benefits for any week beginning during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms) when such services are performed in the first academic year (or term) and there is a contract or reasonable assurance that the individual will perform in such capacity for any educational institution in the second academic year or term. (Refer to Sections F and G for a full discussion of professional school employees.)

(ii) Nonprofessional school employees performing services for an educational institution may be disqualified from receiving UI benefits between two successive academic years or terms when services are performed in the first academic year (or term) and there is a reasonable assurance that the individual will perform such services in the second academic year or term. Following an initial disqualification during a recess period, if a nonprofessional school employee does not return to work, or provide services to, an educational institution because the employer withdraws the offer of work, the individual may be eligible for retroactive payment of UI benefits. (Refer to Section F and G for a full discussion of nonprofessional school employees.)

(iii) Professional and nonprofessional school employees shall be denied UI benefits in any week which begins during an established and customary vacation period or holiday recess if the individual performs services in the period immediately before the vacation period or holiday recess and there is a reasonable assurance that the individual will perform services in the period immediately following the vacation period or holiday recess.

(iv) Professional and nonprofessional school employees shall be denied UI benefits during a recess period when the UI benefits are based on wages earned providing services to an educational institution while in the employ of an educational service agency. The term “educational service agency” means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions.

(v) The disqualifying provisions cited above apply to professional and nonprofessional school employees employed by a nonprofit

organization or a state or local government entity providing services to, or on behalf of, an educational institution.

(vi) This provision allows the states to decide whether or not to implement the denial of benefits for periods between years or terms, or vacation/holiday periods within terms, for nonprofessional school employees.

The California Unemployment Insurance Code (CUIC) Section 1253.3(a)-(i) is the California statute that implements the FUTA requirements.

CUIC Section 1253.3(a), states:

> Notwithstanding any other provision of this division, unemployment compensation benefits, extended duration benefits, and federal-state extended benefits are payable…in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this division, except as provided by this section.

As in the federal law, the state law requires UI payments, and the terms and conditions of eligibility, be the same for all claimants except as provided in CUIC Section 1253.3(b)-(i). CUIC Section 1253.3, subsections (b) through (i) will be discussed in detail in this Benefit Determination Guide, Sections B through G. The CUIC 1253.3 subsections are paraphrased below:

(b) Professional school employees performing services in an instructional, research, or principal administrative capacity to an educational institution for a nonprofit organization or public entity employer, shall be denied UI benefits in a period between two successive academic years or terms, or between two regular, but not successive academic terms or years if provided for in a contract, or during a paid sabbatical, if the individual performs services in the first academic year or term, and there is a contract or a reasonable assurance that the individual will perform services in the second academic year or term.

(c) Nonprofessional school employees employed by a nonprofit organization or public entity providing services to an educational institution, shall be denied UI benefits in a period between two successive years or terms, if the individual performs services in the first academic year or term, and there is a reasonable assurance that the individual will perform services in the second academic year or term. However, following an initial disqualification during a recess period, if a nonprofessional school employee does not return to work, or provide services to, an educational institution because

the employer withdraws the offer of work, the individual may be entitled to retroactive payment of UI benefits. Individuals who are eligible for UI benefits based on non-school employment during the recess period must seek work each week according to department requirements. For those who have only school employment and are denied UI benefits under CUIC Section 1253.3 during this period, registration for work satisfies the seek work requirement. The request for retroactive payment of benefits must be made no later than 30 days following the beginning of the second academic year or term.

(d) Professional and nonprofessional school employees shall be denied UI benefits in any week which begins during an established and customary vacation period or holiday recess, if the individual performs services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform services in the period immediately following the vacation period or holiday recess.

(e) Professional and nonprofessional school employees shall be denied UI benefits during a recess period when the UI benefits are based on wages earned providing services to an educational institution while in the employ of an educational service agency. The term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions.

(f) The disqualifying provisions cited in subsections (b),(c),(d), and (h) apply to professional and nonprofessional school employees employed by a nonprofit organization or a state or local government entity providing services to, or on behalf of, an educational institution.

(g) Reasonable assurance is defined as an offer of employment or assignment made by an educational institution, provided that the offer is not contingent on enrollment, funding, or program changes. An individual who has been notified by the employer that he or she will be replaced is not considered to have reasonable assurance.

(h) When the time spent working for an educational institution by a professional or nonprofessional school employee constitutes one half or more of the individual's total time spent working while employed by an educational institution, nonprofit organization, or state or local government entity, all of the individual's earnings for that employing unit are subject to the provisions of CUIC Section 1253.3.

(i) A public entity school employer must provide nonprofessional school employees with a written statement no later than 30 days before the end of the first of the academic years or terms. The statement must include:

1. Whether or not there is a reasonable assurance of reemployment.
2. The individual should file a UI claim (whether or not the statement says the individual has reasonable assurance).
3. The individual may file a UI claim, and the Employment Development Department (EDD) will determine the individual's eligibility for benefits, not the employer, if the statement informs the individual there is a reasonable assurance of reemployment.
4. The individual shall be entitled to a retroactive payment of benefits if it is stated that the claimant has reasonable assurance of reemployment, but the individual is not offered an opportunity to perform the services for the school employer for the second academic year or terms, if the individual is otherwise eligible, has filed a claim for each week, and the request for benefits is made no later than 30 days following the beginning of the second academic year or term.

B. School Employer

A school employer can be a public entity (public school or government entity (e.g., police department), a nonprofit organization (e.g., the YMCA), or an educational institution (e.g., public school or private, nonprofit school including colleges and universities). The wages earned with any of these types of employers are all considered school wages for UI purposes. The Department has categorized the employers as either a "school employer" or a "school supportive employer" to differentiate between employers that are educational institutions and employers that provide supportive services to educational institutions.

To be considered an educational institution school employer, the course of study or training offered by the employer is not necessarily a determining factor. The course of study may be academic, technical, trade, or geared toward preparing for gainful employment in a recognized occupation.

The CUIC Section 1253.3 establishes what is considered a school or school supportive employer and is paraphrased below.

> …based on service performed in the employ of a nonprofit organization, or of any entity as defined by Section 605…for an educational institution, or in the employ of a nonprofit

> organization, for services provided to, or on behalf of, an educational institution…

Section 605 (a)(1) states in part:

> **"Public entity"** means the State of California (including the Trustees of the California State University and Colleges, and the California Industries for the Blind), any instrumentality of this state (including the Regents of the University of California), any political subdivision of this state or any of its instrumentalities, a county, city, district (including the governing board of any school district or community college district and county board of education, any county superintendent of schools, or any personnel commission of a school district or community college district that has a merit system pursuant to any provision of the Education Code),… any public authority, public agency, or public corporation of this state, any instrumentality of more than one of the foregoing, and any instrumentality of any of the foregoing and one or more other states or political subdivisions.

Therefore, a **public entity** is a state or local government body such as a school or school district, a school board or a county board of education, or a police department.

A **nonprofit organization** is a tax-exempt organization that serves the public interest. In general, the purpose of this type of organization must be charitable, educational, scientific, religious, or literary. Legally, a nonprofit organization is one that does not declare a profit and instead utilizes all revenue available after normal operating expenses in the service to the public interest.

School employers may include:

- Public preschools, elementary and secondary schools, community and state colleges and universities
- Private, nonprofit preschools, elementary and secondary schools, colleges and universities
- Private, nonprofit academies and trade schools
- Nonprofit, church-sponsored schools
- Educational institutions of state and local governments such as county boards of education, and superintendents of schools, and city school districts
- Migrant Schools (in some cases)
- Charter Schools (nonprofit)

School supportive employers may include:

- University student unions (nonprofit)
- Campus bookstores (nonprofit)
- Childcare centers (nonprofit)
- Non-school public entities such as city transportation departments or city police departments
- Private, nonprofit organizations providing services to an educational institution

C. School Employee

A **school employee** is: an individual who is employed in a preschool, an elementary or secondary educational institution in the public school system, a private, nonprofit school, an institute of higher education, and some church sponsored schools that meet specific criteria.

A **school supportive employee** is: an employee of a nonprofit organization or public entity who performs services to, or on behalf of, an educational institution, but is not an employee of the educational institution. For example, the employee of the state department of health services who goes to the schools to provide eye exams to elementary school children would be considered a school supportive employee.

The FUTA Section 3304(a)(6)(a)(i)-(ii) and the U.S. Department of Labor (U.S. DOL) guidelines distinguish between professional and nonprofessional school employees for UI benefit purposes based on the work performed, not the job title. The CUIC Section 1253.3 makes the same distinction. The California Education Code and school employers use different terms for classifying these employees. Their terms are not discussed in this Benefit Determination Guide because those definitions are not applicable for UI benefit purposes.

The FUTA defines a professional school employee as one who works in an instructional, research, or principal administrative capacity for an educational institution. (Refer to Section G, number 3, subsection a, for examples of professional school employees.)

CUIC Section 1253.3(b) refers to **professional** employees and states in part:

> Benefits...based on service performed in the employ of a nonprofit organization, or of any entity as defined by Section 605, with respect to service in an instructional, research, or principal administrative capacity for an educational institution…

School Employee Claims

Instructional Employee: teaches in formal classroom and seminar situations. Teaches in less formal arrangements, such as, tutors, coaches, and in-home instructors. May direct students in independent research and learning.

Research Employee: directs research projects and is directly engaged in gathering, correlating, and evaluating information and making findings. The individuals who provide supportive services for the research, such as typists, clerks, or technical personnel who work under the direction of the research staff are not professional employees under this provision.

Principal Administrative Capacity Employee: officials of the institution such as principals or deans, as well as those in a non-teaching supervisory administrative position, such as chief librarians, business managers or comptrollers, etc.

The FUTA defines a **nonprofessional** school employee, and CUIC Section 1253.3(c) is the state statute that addresses nonprofessional school and school supportive employees. (Refer to Section G, number 3, subsection b, for examples of nonprofessional school employees.)

CUIC Section 1253.3(c), defining a **nonprofessional** school or school supportive employee, states in part:

> Benefits…based on service performed in the employ of a nonprofit organization, or of any entity as defined by Sections 605, with respect to service in any other capacity than specified in subdivision (b) for an educational institution…

Some school employee positions require advanced education degrees or certification, but are considered nonprofessional positions for UI purposes. The FUTA classifies as nonprofessional, positions that do not involve instruction, research, or principally administrative work for the school employer. Therefore, work in “any other capacity” is work that is not instruction, research, or administrative. Individuals who do not teach, who work as aides or helpers, or who do not supervise others, are nonprofessional school or school supportive employees for UI purposes.

D. School Wages in the Base Period

School wages are the wages paid by a public entity or a private, nonprofit employer for work providing or supporting educational instruction or services. The provisions of CUIC Section 1253.3 are applied to UI claims only if all or portions of the wages in the base period are earned in school or school supportive employment. CUIC Section 1253.3 is applied to the wages of professional and nonprofessional school or school supportive employees, who

spend fifty percent or more of his or her time working, providing instruction or services to an educational institution.

The first element to consider when determining UI eligibility during a recess period for a school employee is that the claimant has earned wages during the base period of the UI claim performing services for an educational institution, or in support of an educational institution.

1. Public School Wages

   The Employment Development Department assigns a UI tax account number specific to public schools, community colleges, public universities and some private, nonprofit schools, which identify base period wages earned with these employers as wages earned working for an educational institution. When a UI claim is filed for a claimant who worked for one of these school employers, the UI claim will display one weekly benefit amount (WBA) and maximum benefit amount (MBA) based on all employment during the base period, and a separate WBA and MBA based only on employment with non-school employers. The Department refers to this award as a Quasi Award.

   Example 1:

   The claimant worked only for ABC public school district during the base period of the claim and earned $2,400.00 in each quarter. The claimant's UI claim would show an MBA of $2,418.00 and a WBA of $93.00, based on all wages, and $0.00 MBA and $0.00 WBA (Quasi Award) because there is no non-school employment.

   Example 2:

   The claimant worked for ABC public school district during the base period of the claim and earned $2,400.00 in each quarter. The claimant also worked for a for-profit retailer during the base period, earning $1,500.00 in each of two quarters of the base period. The claimant would have an MBA of $3,900.00 and a WBA of $150.00 based on wages for all employers, and another MBA of $1,500.00 and a WBA of $60.00 (Quasi Award) based only on the employment with the private retailer.

   Only the wages earned in employment with the school district are subject to the provisions of CUIC Section 1253.3. CUIC Section 1253.3 does not apply to the WBA and MBA based on the wages earned with the private for-profit retailer. This claimant may be paid $60.00 per week during the recess period, if disqualified under CUIC Section 1253.3, and the claimant meets all other eligibility requirements.

2. Private, Nonprofit School Wages

MISCELLANEOUS

School Employee Claims

Private, nonprofit school wages are treated the same as public school wages for UI purposes. These wages, however, generally will not be identified as school wages by the UI employer tax account number. Sometimes a charter school will have a school employer tax account number, but not always. UI claims based on charter school, or church-sponsored school wages may not have a Quasi Award.

a. **Charter schools** operate as either a private, nonprofit school, or a for-profit school. As a private, nonprofit school they may operate independently, or they may be affiliated with a public school district. Further fact finding will need to be done to establish which category the Charter school falls into. If the school is a nonprofit Charter school, the provisions of 1253.3 apply. If the Charter school is a for-profit school, CUIC Section 1253.3 does not apply.

b. Wages earned working for a **church-sponsored school** may be subject to the provisions of CUIC Section 1253.3. Church-sponsored schools, which are not primarily for the purpose of religious instruction, are not exempt from UI taxes, and are treated the same as any other nonprofit employer. Wages earned while working for these non-exempt church-sponsored schools are considered school wages for UI purposes and the provisions of CUIC Section 1253.3 apply. Therefore, when a claimant works at a school run by a church, synagogue, or other religious organization, which is primarily an academic institution, the wages are considered school wages for UI purposes.

3. Public Entity School Supportive Wages

CUIC Section 1253.3 applies to a claimant who has earned wages providing services to an educational institution while employed by a public entity. Wages earned while working for a public entity school supportive employer are not identified as “school wages” with a school employer designated UI tax account number. Wages earned working for a school supportive employer providing services to a school appear the same as non-school wages when establishing a UI claim.

An example of a public entity school supportive employer is the city police department that provides crossing guards to the school district. These crossing guards are employees of the city police department, and work at the school. The city police department employer also has employees that do not work in any capacity for a school, such as the police officers and administrative personnel. The base period wages earned by the school crossing guard appear the same as those employees who do not work in school supportive employment (e.g., police officer). The wages earned while providing services to an educational institution are subject to the

provisions of CUIC Section 1253.3. UI benefits based on these wages cannot be paid during the recess period when the claimant has reasonable assurance to return to work.

4. Nonprofit School Supportive Wages

School wages also exist for the claimant who works for a private, nonprofit organization providing educational services to a school. Again, these wages are not identified as "school wages" with a school employer designated UI tax account number, but are like the public entity school supportive employee wages that are subject to CUIC Section 1253.3.

Examples of nonprofit organizations involved in school or school supportive employment would be organizations such as Easter Seals or the YMCA that have employees who work in the public schools providing tutoring or classroom help to physically or mentally disabled students. Nonprofit foundations (e.g., a University foundation) may be school supportive employers. A private, nonprofit organization that provides educational services to "at risk" youth at the request of the juvenile justice system, could also fall into this category.

Some nonprofit organizations have branches that provide different services under the umbrella of one organization. The organization may provide services to the elderly or disabled, separate from the services provided to the educational institution. Only the wages earned by those employees of the organization who provide services to an educational institution while working for the nonprofit organization are subject to CUIC Section 1253.3. Benefits may not be paid during the recess period based on wages earned providing educational services while working for the nonprofit organization when the claimant has reasonable assurance to return to work.

Fraternal organizations and sororities located on or near university campuses are not considered school supportive employers, and the individuals who work for these organizations (i.e., doing the housekeeping, accounting, etc.), do not fall under the provisions of CUIC Section 1253.3. Fraternities and sororities may be nonprofit organizations, but they do not provide services to an educational institution. They are social or philanthropic organizations primarily made up of university students who join in order to network with other students or to become involved in the organization's community services projects.

MISCELLANEOUS

School Employee Claims

5. Percentage of Time Spent in School or School Supportive Employment

When the school or school supportive employee works 50 percent or more of his/her time providing services to a school, all of the claimant's wages earned with this employer are subject to CUIC Section 1253.3.

CUIC Section 1253.3(h) states in part:

> If the time for service performed during the period of …any contract for any academic year or term by an individual… constitutes one-half or more of the time in total service performed for the employing unit by the individual…all the services…for that period shall be deemed subject to the benefits payment restriction provisions of the section.

Even if the claimant works less than 40 hours per week, when all of the claimant's work for the school or school supportive employer is work providing services to an educational institution, then 100 percent of the claimant's time working is in school or school supportive employment.

The following are some examples to illustrate CUIC Section 1253.3(h).

Example 1:

The claimant worked for a public entity two hours a day as a crossing guard, and two hours a day as a clerk. Therefore, the claimant spent 50 percent of the time working as a crossing guard, and 50 percent of the time working as a clerk. All of the wages earned with this employer, both as a crossing guard and a clerk, would be considered school wages under CUIC Section 1253.3.

Example 2:

The claimant worked for a nonprofit organization 49 percent of the time as a classroom aide, and 51 percent of the time in the elderly food service program. None of the wages earned with this employer would be considered school wages because the claimant did not work 50 percent or more of the time for this employer providing school supportive services.

Example 3:

A full-time employee of a public entity, in this case a city police department, works 5 hours a day or 25 hours a week (62 percent) as a school crossing guard and 3 hours a day or 15 hours a week (38 percent) as a mechanic. Since 50 percent or more of the claimant's time spent working is to support educational services as a school crossing guard,

both the wages earned as a crossing guard and the wages earned as a mechanic are considered school employment wages under Section 1253.3.

6. Head Start School Wages

Head Start programs are federally funded and operated by local community action groups and education (school) boards. Head Start programs operated by community based organizations do not meet the criteria of educational institutions because the work performed in these programs is not considered an educational service, and the employer is not considered an educational institution. The provisions of Section 1253.3 do not apply to the wages of claimants who work for community based organization Head Start programs. The provisions of CUIC Section 1253.3 may apply to Head Start programs operated by a school board. These claimants are considered to be providing a service to an educational institution, and the wages they earn fall under the provisions of CUIC Section 1253.3.

a. Community Based Organization Wages

Wages earned in employment with a community based organization Head Start program are not considered school wages for UI purposes.

Federal guidelines describe Head Start programs:

> Head Start programs are comprehensive developmental programs designed to meet children's needs in the health (medical, dental, mental, nutritional), social, and education areas. The goal is child adjustment and development at the emotional and social levels, rather than school-type training…Head Start programs operated by Community Action Groups do not meet the criteria of 'educational institutions'.

b. School Board Operated Head Start Wages

Wages earned while working for a Head Start program run by the local school board are considered school wages for UI purposes according to the federal guidelines.

A Head Start program is an educational institution when operated by the local board of education as an integral part of the school system. When the program is operated in the school facilities, with Head Start workers as employees of the Board and the school system in every respect, subject to all employing policies, such as hiring, firing, and working conditions, as other employees performing services for the

educational institution, then such workers are considered to be employed by an educational institution.

Head Start employees are considered school employees if the program meets all of the following criteria:

- The program is operated by a local board of education as an integral part of the school system.
- The program is located in the facility of an educational institution.
- The Head Start workers are employees of the Board and the school in every respect. They are subject to all employing policies such as hiring, firing, and working conditions, as other employees performing services for the educational institution.

In other cases, the federal Department of Health and Human Services may provide funds to a local education board to administer a Head Start program as a side activity. The board acts only in a sponsorship role because no other public entity is available to manage the program. These administrative duties are separate from the Board's educational role. These Head Start employees are **not** considered school employees because they are not subject to the employment criteria of the school district or Board as stated in the criteria above.

7. Preschool Wages

A preschool can be an infant center, family day home, day care center, or other facility that is a place where instruction is provided to children before the first year of public elementary school. The name of the organization does not control whether it is a preschool.

A preschool is not considered an educational institution if the program only incidentally involves an instructional curriculum, and is not attached to an educational institution. For example, a nonprofit preschool may instruct students on personal hygiene, however the primary purpose of the organization is to provide supervision for young children while their parents are at work or school.

A preschool that is operated by a private, nonprofit school employer that also operates an elementary, middle or high school is an educational institution under the provisions of CUIC Section 1253.3. An example of this would be a church that operates schools for grades K-12 that are primarily academic, and also operates a preschool. Much like the Head Start program that is run by the school board whose employees are considered school employees, church-sponsored preschool employees are considered school employees if they work under the same terms and conditions as the employees in the K-12 grade schools sponsored by the same church employer.

The following factors indicate that a preschool is an educational institution and subject to the provisions of Section 1253.3:

- The institution is licensed as an educational institution.
- The institution requires or uses the services of certificated teachers.
- The institution has a regularly organized body of students (the student population does not fluctuate on a daily, weekly, or monthly basis depending on the parents' need to have the children supervised).
- The students receive academic credits.
- The institution has an organized course of study or curriculum.

8. Migrant Child Development Program School Wages

Most Migrant Child Development Programs are seasonal programs located in agricultural counties of California. The State Department of Education administers and funds these programs. At the local level, the programs are operated by offices of county superintendents of schools, school districts, or private, nonprofit agencies. The centers operate primarily during the agricultural work season, historically from late April through November. While the funding and administration of these programs all fall under the Department of Education, the programs can differ from region to region.

Migrant Child Development Programs offer services including: supervision while parents are working or in training, an educational component, health services, parent education, nutrition, staff development, and related social services. Some programs serve infants, some serve preschool-age children only, and some serve school-age children only.

The period of time the program operates each year, is not a determining factor whether the provisions of CUIC Section 1253.3 apply to those individuals working in the program. It may be a year-round program, one that operates on the traditional school year calendar, or it may operate only during the agricultural crop season.

a. Program Operated by Superintendent of Schools

The wages of an employee of a Migrant Child Development Program, which is operated by the offices of county superintendents of schools, or a school district, are subject to the provisions of CUIC Section 1253.3. Similar to Head Start, the individuals working in the Migrant Child Development Program are employees of the school board or the school district when they are subject to all employing policies, such as hiring, firing, and working conditions, as other employees performing services for the educational institution. Whether the program is carried out in school facilities, or in another location such as a housing complex or migrant camp, is not a determining factor for eligibility for migrant

child development program employees under CUIC Section 1253.3. These individuals are employees of the school district, which makes CUIC Section 1253.3 applicable.

b. Program is an Integral Part of the School System

CUIC Section 1253.3 applies when the Migrant Child Development Program is an integral part of the school system. An employee's wages are subject to the provisions of CUIC Section 1253.3. This is true even when the employee does not have the same employment rights as the school or school district employee, and the program is carried out in the public schools' facilities. The Migrant Child Development program employees in this situation are considered school supportive employees. They are school supportive employees because they are not subject to the terms and conditions of employment under the same provisions as the employees of the school or school district and are providing a service to an educational institution.

c. Community Based Organization

CUIC Section 1253.3 does not apply when the Migrant Child Development program is operated by a community based organization and is not an integral part of the school system. This would generally occur when a community based organization provides childcare services to migrant workers. These programs would be operated as preschools or childcare centers. CUIC Section 1253.3 does not apply as these individuals are employees of the nonprofit organization, and are not providing services to an educational institution even though their program is funded and administered by the Department of Education.

9. School Wages Earned in Another State

Wages earned in school or school supportive employment outside of California, are considered the same as school wages earned in California. The out-of-state wages fall under the provisions of CUIC Section 1253.3 when they are combined in a UI claim administered by California. CUIC Section 1253.3 must be considered for these wages.

As long as the educational institution is authorized to operate as such by the state where the work was performed, the within and between terms denial provisions of CUIC Section 1253.3 must be applied. An educational institution in another state is not required to meet California's requirements to operate as an educational institution in California in order to apply the requirements of CUIC Section 1253.3.

MISCELLANEOUS

School Employee Claims

The FUTA Section 3304(a)(6)(A) pertains to services performed by such individuals in "any educational institution," irrespective of whether the institution is located within or outside the state whose UI law applies to the claim filed.

10. For-Profit School Wages

Individuals who work for a for-profit school, or an employer who provides school services on a for-profit basis, do not have wages in the base period that would be subject to the provisions of CUIC Section 1253.3.

Examples of these types of employers are:

- For-profit private schools and academies.
- For-profit private transportation companies that are paid by the school or district for services to transport students to and from school.
- For-profit food service companies that are paid by the school or district to operate cafeterias on the schools premises, or provide food service to the school.
- For-profit companies that provide housekeeping or janitorial services for public or private, nonprofit schools.
- For-profit companies that provide special education services for public school students through contracts with the school district.
- For-profit security companies that provide security services to the school or district.

11. Federally Operated School Wages

Federally operated schools are generally military post dependents' schools, and schools operated by the Bureau of Indian Affairs. The "equal treatment" provision in the FUTA requires state agencies to pay UI claims based on federal wages in the same amount and on the same terms and conditions as claims for those who work in the private sector. Whether the denial of benefits during a recess period for school employees can be applied to federal school employees depends on how the state law is written. If, under state law, the denial provisions apply only to state and local government entities, and nonprofit organizations, the denial of benefits during the recess period would not apply to federal school employees. If, under state law, the denial provisions apply to all educational institutions, including for-profit schools, the denial provisions would also apply to federal school employees. California law in CUIC Section 1253.3 provides for denial of UI benefits during a recess period only to claims based on work for state and local government entities as defined under CUIC Section 605, and nonprofit organizations. Therefore, the provisions of CUIC Section 1253.3 cannot be applied to federal school employees, as federal schools do not meet this criteria under California law.

MISCELLANEOUS

School Employee Claims

There is no issue under CUIC Section 1253.3 when a claimant has base period wages earned while working for a federally operated school.

12. Student Wages

Wages are exempt from UI coverage (not useable for UI purposes) when earned while the claimant is enrolled in and regularly attending classes while working at the same educational institution.

Wages are also exempt when the claimant works at a school where his or her spouse attends school and the work is under a program to provide the student with financial assistance by employing the student's spouse.

CUIC Section 642 states in part:

> "Employment" does not include service performed in the employ of a school, college, or university, if such service is performed:
>
> (a) By a student who is enrolled and is regularly attending classes at such school, college or university, or
>
> (b) By the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that: (1) The employment of such spouse to perform such service is provided under a program, to provide financial assistance to such student by such school, college, or university, and (2) Such employment will not be covered by any program of unemployment insurance or disability compensation.

Example 1: Student Working at School Attending

A student works in the university operated, on-campus, nonprofit, coffee house while attending classes at the same school. The wages are exempt. No issue exists under CUIC Section 1253.3. However, a monetary determination may need to be made regarding the use of the wages for UI purposes.

MISCELLANEOUS

School Employee Claims

Example 2: Student's Spouse Working at School Spouse is Attending

The claimant works in the university library as a clerk. The claimant's spouse is a full-time student at the same university. The claimant was given the job as part of the spouse's financial aide package, and was told by the school at the time of hire that the wages would not be covered for unemployment insurance purposes. The wages are exempt. There is no issue under CUIC Section 1253.3. However, a monetary determination may need to be made regarding the use of the wages for UI purposes.

Example 3: Graduate Student Working on Campus

A person is enrolled at a university in a graduate program for child psychology and is working part-time at the on-campus child care center in order to study the development of young children for his graduate thesis. The student is not required to attend any scheduled classes while preparing his thesis. The claimant is being paid for working at the child care center. The wages are not covered for unemployment (they are exempt) because they are earned specifically in the pursuit, and are part of, earning the graduate degree. No CUIC Section 1253.3 issue exists. However, a monetary determination may need to be made regarding the use of the wages for UI purposes.

Example 4: Medical Centers

Wages earned by individuals working for a university medical center would be exempt from UI coverage if the individual is also enrolled in and attending classes at the university. This would be the case when a student nurse is working at the medical center as part of the curriculum of the university that runs the medical center, in order to earn a Registered Nurse (RN) degree. There is no issue under CUIC Section 1253.3. However, a monetary determination may need to be made regarding the use of the wages for UI purposes.

13. Work-Study School Wages

Work-study wages are exempt from UI taxes and therefore are not usable for a UI claim.

The wages of a student under the age of 22 who performs work as part of a work-study program are exempt for UI purposes. These programs are a combination of classroom study and outside work (work with a private employer) integrated into the regular school curriculum to form part of the full-time education program. The wages are exempt from UI taxes in order to encourage employers to participate in these programs.

MISCELLANEOUS

School Employee Claims

This is established in CUIC Section 646, which states in part:

> "Employment" does not include service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer except that this section shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

Therefore, if a student is earning wages with a private employer as part of a work-study program, which is an integral part of the student's curriculum, the wages are exempt for UI purposes. There is no issue under CUIC Section 1253.3. However, a monetary determination may need to be made regarding the use of the wages for UI purposes.

14. Quasi Award

It is important to remember that when a claimant has a Quasi Award and is ineligible for payment of benefits based on school wages under CUIC Section 1253.3, the claimant is eligible to be paid UI benefits during the recess period based on wages earned in non-school employment under the same provisions as any other claimant. The federal guidelines for school employee issues state, "the prohibition [to paying benefits based on school employment] does not apply to benefits to the individual based on any other services than those performed in employment with a state or nonprofit educational institution."

15. Multiple Base Period School Employers

When the claimant has multiple base period school employers and is disqualified under CUIC Section 1253.3, all of the school employer base period wages are included in the disqualification, regardless of the claimant's current status with, or attachment to, a particular base period school employer.

16. Change in Employer's Nonprofit Status

There are occasions when a school or school supportive employer changes its tax base status from for-profit to private, nonprofit or vice versa during the base period of the claim. How these claims are addressed in

regard to CUIC Section 1253.3 depends on the employer's status at the time the UI claim is filed. See the following examples for further illustration.

Example 1: School Supportive Employer Change from For-Profit to Nonprofit

The claimant last worked for Food Service Corporation as a school supportive employee in the school cafeteria. Food Service Corporation was a for-profit employer for the first two quarters of the base period and changed its status to private, nonprofit for the last two quarters of the base period. Food Service Corporation is the claimant's only base period employer.

Since the claimant performed services for an educational institution as a Food Service Corporation employee during the base period when the employer was a private, nonprofit school supportive employer, there are school wages in the base period. Only those wages earned while the employer was a nonprofit employer would be subject to CUIC Section 1253.3 provisions. The wages earned while the employer was a for-profit employer would not be subject to CUIC Section 1253.3.

Example 2: School Employer Changes from Nonprofit to For-Profit, No 1253.3 Wages Issue

The claimant worked as an educational aide the entire base period for a private school. The employer was a private, nonprofit school for the first three quarters of the base period. The employer changed its status for the last quarter to a for-profit, private school.

At the time the claimant filed her claim, the employer was a for-profit employer. If the claimant returns to work with the same, or another, for-profit employer after the recess period, the claimant does not meet the reasonable assurance criteria because the employer is not considered a school employer (for-profit employer). None of the claimant's wages are subject to CUIC Section 1253.3.

Example 3: School Employer Changes from Nonprofit to For-Profit, 1253.3 Wages Issue Present

The claimant worked as an educational aide the entire base period for a private school. The employer was a private, nonprofit school for the first three quarters of the base period. The employer changed its status for the last quarter to a for-profit, private school. At the time the claimant filed for UI benefits, the employer is a for-profit employer. The claimant will not return to work for that employer, but will return to work after the recess period with the public school district.

School Employee Claims

The base period wages earned by the claimant during the time the base period employer was a private, nonprofit employer are subject to the provisions of CUIC Section 1253.3. In this case, the claimant has school base period wages (the wages earned when the base period employer was a private, nonprofit school employer) and has reasonable assurance to return to work with a school employer (the public school district), therefore, the provisions of CUIC Section 1253.3 apply to the base period wages earned in school employment.

When it is determined that the claimant has school base period wages, the Department then proceeds to consider whether the claimant is attached to a school employer, is in a recess period, and has reasonable assurance.

E. Attachment to a School Employer

After it has been determined that the claimant has school base period wages, in order for an issue to exist under CUIC Section 1253.3, the claimant must be attached to a school or school supportive employer. This is not the same as having reasonable assurance to return to work with the school employer. Attachment demonstrates that the claimant currently works for or is expecting to work for a school employer in the next year or term. If there is no attachment to a school employer at the time the UI claim is filed, there is no issue under Section 1253.3.

The claimant's attachment to a school or school supportive employer is assessed by the Department independent of the claimant's base period school wages. The school base period wages establish the claim, and begin the process of investigation of a potential school employee issue. The claimant's attachment to any school or school supportive employer at the time the UI claim is filed, determines whether the Department continues to investigate CUIC Section 1253.3 eligibility criteria. The attachment to the school or school supportive employer does not have to be with a base period school employer, although it may be. The claimant can be attached to the most recent school employer, a base period school employer or to a school employer for whom the claimant will work in the future.

The claimant may have worked for one or several employers during the base period of the claim. If the claimant has no attachment to any school or school supportive employer at the time the UI claim is filed, there is no issue regarding CUIC Section 1253.3.

1. Temporary School or School Supportive Employees

A temporary school employee, who intends to return to work for a school employer, is attached to a school employer. The temporary school employee's return to work may be contingent on enrollment, funding or program changes, therefore, the employee may not know if he/she will

actually return to work until the next term begins. An attachment to the school employer in this case is established if the temporary school employee intends to return to work, and has not been told by the school employer that he/she will not be asked to return. The Department will investigate the reasonable assurance and recess period provisions of CUIC Section 1253.3 to determine eligibility for UI benefits during the recess period for these claimants.

2. Substitute School or School Supportive Employees

   The substitute employee is attached to a school employer when the substitute employee plans to continue accepting assignments from a school or school supportive employer. The Department will investigate CUIC Section 1253.3 criteria. If the substitute employee does not intend to continue accepting assignments from the school or school supportive employer, there is no issue under CUIC Section 1253.3. (There may be separation, able and available, or suitable work issues.)

3. Voluntary Quit or Termination

   The school employee who has quit or been terminated from one school or school supportive employer, and has a definite job promise from another school or school supportive employer, is attached to a school employer. The CUIC Section 1253.3 criteria must be investigated regarding the new school employer (as well as the CUIC Section 1256 issue).

   The school or school supportive employee who has quit or has been fired, and has no other school or school supportive job promises, is not attached to a school employer, and there is no issue under CUIC Section 1253.3 (there is an issue under CUIC Section 1256).

The following examples will illustrate the concept of attachment to a school employer.

Example 1:

A claimant worked for three different school districts as a substitute employee and for a law firm as a paralegal during the base period of the UI claim. The claimant has been laid off from her paralegal job with the law firm, which was her most recent employer. There is a Quasi Award because the claimant worked for the school districts and a non-school employer in the base period. The claimant is not on any substitute list with any school employer.

The claimant has no attachment to any school employer. There is no issue under CUIC Section 1253.3. Recess period and reasonable assurance are not investigated.

MISCELLANEOUS

School Employee Claims

Example 2:

The claimant worked for three different school districts as a substitute employee and for a law firm as a paralegal during the base period of the UI claim. The claimant has been laid off from her paralegal job with the law firm, which is her most recent employer. There is a Quasi Award because the claimant worked for the school districts and a non-school employer in the base period. The claimant decided after being laid off from the paralegal job, that she wanted to return to work for the school district or districts, and was reinstated on the substitute list for the next term.

The claimant is attached to a school employer. Recess period and reasonable assurance criteria under CUIC Section 1253.3 would be investigated.

Example 3:

The claimant worked for school employers during the entire base period of the UI claim. At the time of filing the UI claim, the school year has ended. The claimant will begin permanent work with the city fire department one month after filing the UI claim. The claimant will not return to work as a school employee.

The claimant has no attachment to any school employer. There is no issue with CUIC 1253.3. Recess period and reasonable assurance are not investigated.

Example 4:

The claimant is a custodian who is laid off due to lack of work from ABC school district. The custodian has accepted a new job with EFG school district to begin in the next year or term.

The claimant is attached to a school employer. Recess period and reasonable assurance must be investigated and determined.

When it is determined that the claimant has school wages in the base period, and is attached to a school employer, the Department will proceed to determine whether the claimant is in a recess period, and if the claimant has reasonable assurance to return to work.

MISCELLANEOUS

School Employee Claims

F. School Recess Period

A claimant must be requesting UI benefits during a school recess for the provisions of Section 1253.3 to apply. A school recess can be a break between terms, a summer break, a holiday or vacation period, or paid sabbatical.

A school recess is a set or specific period of time, designated by the school employer, when school is not in session. A recess period can occur between regular academic years, semesters, quarters, or terms, during off-track weeks for year-round schools, and/or holiday periods (i.e., winter, spring, and Thanksgiving breaks).

The potential disqualification under CUIC Section 1253.3 is "in respect to any week which begins during a period between two academic years or terms." For example, the last day of the term is Thursday May 24, 2007. The first week that begins in the recess period is the week beginning Sunday May 27, 2007 and ending Saturday June 2, 2007.

The following contains definitions of terms used when discussing recess periods as applied in CUIC Section 1253.3.

1. Academic Year, Term, and Vacation Period Defined

    a. Academic Year – The period of time when educational institutions are in session and constitute a "school year".
    b. Term – Those periods which do not fall within the normal "academic year" but during which classes are held. Examples include summer terms (summer school), trimesters (each trimester within the academic year is a term), or other non-traditional periods during which classes are held such as in year-round schools which use a "track" schedule.
    c. Holiday or Vacation Period – That period within an academic year or term during which school is not in session due to a holiday or school break, such as winter and spring break, Christmas vacation, etc.

2. "Within Term" and "Between Terms" Recess Period

    Recess periods are referred to by the FUTA as "within term" or "between terms."

    a. A **within term** recess period is a break within the regular term. This is usually the winter, spring or Thanksgiving break where the term before and after the break is the same term. This is also referred to as a holiday or vacation recess.

b. A **between terms** recess period occurs when a new term begins after the recess period ends. For example, the summer recess period in the traditional school year, the school's break period between semesters or quarters, or in a year-round school system which uses a track system, when the academic year changes at the end of an "off-track" break.

CUIC Section 1253.3(d) specifically addresses the within terms vacation or holiday period. It states in part:

> Benefits…with respect to services specified by subdivision (b) and (c) are not payable to any individual with respect to any week that commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

The within terms disqualification provision of CUIC Section 1253.3(d) is applied to both professional and nonprofessional school employees.

It is possible for the "within terms" and "between terms" recess period to overlap as might be the case with the winter semester break and the Christmas holiday recess. Federal guidelines instruct that if the holiday or vacation period begins between terms, it is considered a "between terms" recess period. If the holiday or vacation period begins within the term, it is considered a "within terms" recess period.

3. Traditional School Year

A traditional school year in the public school system generally runs from late August or early September through the end of May or mid-June. The 10 to 12-week period from the end of the school year to the beginning of the new school year is commonly known as the "summer recess" or "summer vacation" period.

4. Year-Round School Year

A school system operates a year-round school year when two or more recess periods are scheduled during a calendar year. The period when a school is in session is "on-track", and the period when a school is in recess is "off-track". Schools use several track schedules. The most common are:

- 45 days on-track, 15 days off-track
- 60 days on-track, 20 days off-track

School Employee Claims

- 90 days on-track, 30 days off-track

Although a school employee may work at a school or district that has traditional, single track or multi-track scheduling, the established number of workdays is the same for all public schools as directed by the California Education Code. The difference is the number of recess periods that occur during the school year. Where the traditional school year has one 10 to 12-week recess period during the summer, schools using the year-round track system have two or more recess periods throughout the school year.

Example:

The claimant, a full-time teacher, works for a school district which operates on a year-round basis. The track the claimant is scheduled to work is now off-track, in a recess period. The claimant states the district gives preference to full-time teachers who are off-track for substitute assignments. The claimant states she is available to work as a substitute on another track while she is in recess. The district confirms that if a full-time teacher wishes to work as a substitute while off-track, the district will call to offer work as a substitute teacher.

Although the claimant is off-track, she is available to substitute on other tracks which are ongoing. Since there are other tracks in session, and she is available for work if called, she is not in a recess period. The claimant is eligible under the provisions of CUIC, Section 1253.3. If the claimant states she is not available for work as a substitute when off-track, she would be subject to disqualification under CUIC Section 1253.3. There may also be an issue regarding availability under CUIC Section 1253(c).

5. Multiple Recess Periods

When a school employee works for multiple schools or districts, in order for CUIC Section 1253.3 to apply, all schools or districts for which the claimant works must be in recess or off-track at the time the claimant requests UI benefits. For example, when a classroom aide works at two different schools in the district, if there is work available for the claimant in either school, when one of the schools is off-track, the claimant is not in a recess period and CUIC Section 1253.3 does not apply. Therefore, when one of the schools is off-track, but the other school(s) is on-track, a disqualification under CUIC Section 1253.3 would not be appropriate if the claimant is available and able to work at the schools that are on-track.

CUIC Sections 1253.3(b) and 1253.3(c) address differences in recess periods as applied to professional and nonprofessional school employees. Here we will look at the differences as they pertain to the recess period only. A further discussion pertaining to these differences and offers of reasonable assurance to return to work will follow in Section G.

MISCELLANEOUS

School Employee Claims

6. Recess Period for the Professional School Employee

A between terms recess period for a professional school employee occurs when; the recess is between two successive terms, between two regular but not successive terms when the claimant has a contract or an agreement with the employer for such, or when the employee is on a paid sabbatical.

CUIC Section 1253.3(b) referring to professional employees states in part:

> Benefits…are not payable to any individual with respect to any week which begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms, during that period, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs services in the first of the academic years or terms...

a. Between Two Successive Years or Terms

"Two successive" periods means the second term immediately follows the first. The fall semester and the spring semester are two successive terms. The end of the one traditional school year in June and the beginning of the new school year in August or September is considered two successive years. In a year-round school system, when the school is "off-track" between two regularly scheduled "on-track" sessions, this is a recess period between successive terms. The break would be between two successive years if the academic year also changes during the off-track period.

b. Between Two Regular But Not Successive Years or Terms

"Two regular but not successive terms", means that the individual has a contract to work two regular terms, but that the terms do not follow one another. Rather than work the fall and spring semester in succession, the individual has a contract to work only the fall semester each year, skipping the spring semester and summer session. The fall semester is a regular term. The second fall semester is not in succession to the first (there is the spring semester and summer session in between).

c. Paid Sabbatical

A sabbatical is any extended period of leave from one's customary work, generally granted to a school employee for rest, research or acquiring new skills or training with the agreement that the individual will return to work at the end of the sabbatical leave. If the employee is paid, the employment relationship continues and the school employee is subject to the provisions of 1253.3. There may also be a wage issue under Section 1252 and/or an able and available issue under CUIC Section 1253(c) if the claimant applies for UI benefits while on a paid sabbatical leave. This is the one situation where the school employer does not have to be in a recess period when the claim is filed for a school employee issue to exist.

7. Recess Period for the Nonprofessional School Employee

A between terms recess period for a nonprofessional school employee occurs when the recess is between two successive terms.

CUIC Section 1253.3(c) referring to nonprofessional employees states in part:

> Benefits…shall not be payable to any individual with respect to any week which commences during a period between two successive academic years or terms…

Nonprofessional school employees are considered to be on a school recess when the break is between two successive academic years or terms. When the school break is between the end of the traditional school year in June, and the beginning of the next traditional school year in August or September, this is considered a break between two successive terms, as well as two successive academic years. In a year-round school system, when the school is “off-track” between two regularly scheduled “on-track” sessions, this is a recess period between successive terms. Another example of successive terms is a break between the fall and spring semester for a college or university.

8. Loss of Customary Work is Not a Recess Period – Contract Reduction

In Precedent Benefit (PB) Decision P-B-412 (1980) the California Unemployment Insurance Appeals Board (CUIAB) concluded that there is a difference between a normal recess period and reduction of customary work in respect to a Community College instructor and a reduction in the terms of his/her contract.

MISCELLANEOUS

School Employee Claims

The claimant was an assistant professor at a community college. He entered into a contract with the community college district to render services during the 1978-1979 school year on an 11.5-month basis. The contract ended June 30, 1979.

In May 1979 the claimant was informed that due to budgetary restrictions he would be changed from an 11.5-month employee to a 10-month employee for the 1979-1980 school year. The claimant was scheduled to, and did, return to work in September 1979. The claimant did not work between June 30, 1979, and September 1979, when he returned to work.

The claimant stated that the 11.5-month contract required that he work in each month of the calendar year. Prior to receiving notice in May 1979, the claimant had been told by the chairperson of the community college board of trustees that his contract for the 1979-1980 school year would probably remain the same as the 1978-1979 school year, therefore he expected to be working during the summer of 1979 as he had during the summer of 1978.

The claimant filed a claim for benefits and the Department determined that the claimant had been laid off due to lack of work and was therefore eligible for benefits under CUIC Section 1253.3. The employer appealed to an administrative law judge (ALJ), who held that the claimant had reasonable assurance to return to work in the 1979-1980 school year and was therefore ineligible for benefits during the recess period under CUIC Section 1253.3. The Appeals Board issued P-B-412 reversing the ALJ decision and held the claimant eligible under CUIC Section 1253.3.

In its decision the Board states …the intent of Congress…was to deny benefits to those school employees who are normally off work during summer recess or summer vacation periods. However, it was not the intent of Congress to deny benefits to year-round employees or those regularly scheduled for summer work that, due to the cancellation of normal or scheduled summer work, became unemployed.

The Board stated in its decision that in this respect, the intent of Congress has been followed and applied in numerous cases arising out of the cancellation of the 1978 summer session following passage of Proposition 13 and the concomitant reduction of funds available to school districts. During the summer of 1978, the Employment Development Department and the United States Department of Labor reevaluated the applicability of Section 1253.3 to professional and nonprofessional school employees who were scheduled to teach or work during the 1978 summer school session. It was concluded, after an analysis of the Congressional Record, that it was not the intent of Congress to deny benefits to those scheduled for summer work that became unemployed due to cancellation of the summer session.

School Employee Claims

The Board believed similar reasoning must be followed in this (P-B-412) case. Stating that the claimant was essentially a full-time employee who was reduced to a 10-month employee, the claimant reasonably expected he would work during the summer period, and when he was reduced to a 10-month employee he was in effect laid off from his normal summer work and suffered a wage loss. The cause of his unemployment was not a normal summer recess or vacation period, but the loss of customary summer work.

As with the professional employee, a loss of customarily scheduled work for a nonprofessional school employee is not a recess period. This is discussed in P-B-417.

In P-B-417 (1981), the claimant was a full-time nonprofessional school employee who had worked 12 months a year for the school district for 18 years. For the 1978-1979 school year, her work year was reduced to 10 months due to "lack of work/lack of funds." The claimant was given 30 days notice of the reduction prior to the end of the 1977-1978 school year, and was notified she would return to work on August 30, 1979, which she did.

The Department determined the claimant was not eligible under Section 1253.3 as she had reasonable assurance to return to work and was in a recess period. The ALJ reversed the Department's decision and the Department and the employer appealed to the Board. The Board reversed the ALJ decision following the same reasoning as stated in P-B-412, that the claimant's loss of customary work was the cause of her unemployment, not a recess period, therefore, CUIC Section 1253.3 did not apply.

9. Summer School

The summer recess period is the period between the end of the traditional school year, and the beginning of the next traditional school year. This period generally begins in June and ends in late August or early September. When a claimant has reasonable assurance to return to work at the end of the summer recess, the claimant is not eligible to be paid UI benefits under CUIC Section 1253.3 during the summer recess. Some schools schedule classes during the summer recess period. School employees may be asked to work during this summer school session. When a school employee is expected to work during the summer school session, this affects the disqualification periods for their UI claims during the summer recess period.

When a claimant is scheduled to work during a summer school session, the summer recess period is considered one recess period, but separated into two parts. The first period is between the end of the current academic year and the beginning of the summer school session. The second is between

the end of the summer school session and the beginning of the new academic year.

A claimant who has reasonable assurance to return to work at the end of the summer recess, and who is scheduled to work during the summer school session, is not eligible for UI benefits in the two periods before and after the summer school session. The claimant would be eligible to be paid UI benefits during the summer school session if the claimant is not fully employed or does not have excessive earnings during the summer school session, or the summer school session is cancelled.

Both P-B-412 and P-B-417 support that a claimant is not in a recess period and is not subject to disqualification under Section 1253.3 if he or she was scheduled to work during the summer school session and then did not work due to cancellation or reduction of the summer school schedule. The claimant's unemployment is not due to a normally scheduled recess or vacation period but is due to the loss of customarily scheduled work. The claimant would be eligible for UI benefits under CUIC Section 1253.3 during the period for which the summer session was originally scheduled.

Similarly, if the claimant is scheduled to work “on call” during the summer recess period, but does not get called to work, the claimant is not in a recess period. The reason the claimant did not work is not due to the recess period, but due to lack of work during the summer school session.

If the claimant who does not have reasonable assurance to work in the next year is scheduled to work during the summer school session, the claimant could be eligible under Section 1253.3 and paid UI benefits during the summer school session providing the claimant is not fully employed or has excessive earnings. The claimant is also eligible for payment in the two periods before and after the summer school session since the claimant does not have reasonable assurance to return to work in the next academic year or term.

The Department must verify with the school employer that the claimant is scheduled to work during the summer school session and whether the claimant has reasonable assurance to work in the next term.

After establishing that the claimant has school wages in the base period, is attached to a school employer, and is in a recess period, reasonable assurance to return to work with a school employer must be investigated and determined.

MISCELLANEOUS

School Employee Claims

G. Reasonable Assurance

The claimant must have reasonable assurance to return to work in the same or similar capacity for a school employer at the end of a school recess period in order for the provisions of Section 1253.3 to apply.

CUIC Sections 1253.3(b) and (c) state in part:

> …Benefits…are not payable to any individual… if the individual performs service in the first of the academic years or terms and if there is a reasonable assurance that the individual will perform services for any education institution in the second of the academic years or terms.

Reasonable assurance is defined in the federal guidelines as a written, oral or implied agreement that the employee will perform services in the same or similar capacity during the ensuing academic year, term or remainder of a term.

The components of reasonable assurance as stated by federal guidelines are that:

a. There must be a bona fide offer of work. The offer is bona fide if the person giving the offer is authorized to do so, and the offer is more than just a possibility of work.

b. The economic terms and conditions of the job offered in the second period are not substantially less than the terms and conditions for the job in the first period.

A permanent school employee who has tenure, and will resume his/her post when the next academic term or year begins, is considered to have an ongoing contract even though he/she has no formal written reappointment, or a letter indicating that the individual's services have been accepted.

1. Bona Fide Offer of Work vs. the Possibility of Work

   A claimant's return to work for a school employer, at the end of the school break period, that is contingent upon student enrollment, funding or program changes does not constitute a bona fide offer of work.

   CUIC Section 1253.3(g) states in part:

   > …reasonable assurance includes but is not limited to, an offer of employment or assignment made by the educational institution, provided that the offer or

assignment is not contingent on enrollment, funding or program changes.

An offer of work that is contingent on factors that the educational institution does not have control over constitutes an offer of a possibility of work only and, therefore, does not meet the reasonable assurance criteria established by the federal guidelines.

Cervisi et al.,v. California Unemployment Insurance Appeals Board (1989) 208, Cal. App. 3d 635:

Cervisi et al*.,* v. California Unemployment Insurance Appeals Board (hereinafter referred to as Cervisi) concerns 17 claimants employed by the San Francisco Community College District. The appellants were community college temporary, part-time instructors, counselors, and teacher's aides. The provisions of Cervisi apply to all temporary school employees both professional and nonprofessional. Temporary school employees are those employees who do not have permanent status with the school employer. They do not have an ongoing contract. They may be hired by the school employer on a year-by-year, or term-by-term basis.

The Department held that the claimants were not eligible for unemployment insurance benefits during the recess period as they had reasonable assurance of being employed by the school employer in the succeeding school year. The claimants appealed and the Department's decision was affirmed by the ALJ. The claimants appealed and the Board affirmed the ALJ.

The claimants filed a petition for a Writ of Mandate. The Superior Court ruled that the claimants did not have reasonable assurance.

The Board appealed from the superior court's decision and the Court of Appeal affirmed the decision issued by the Superior Court.
The claimants were part-time, temporary employees of the San Francisco Community College district. The employees were part-time temporary instructors, counselors and teacher's aides, and as temporary employees had no tenure, or contractual or statutory right to continued employment. They were hired on a semester-by-semester basis and their assignments ended at the close of each semester. Although many had taught for several semesters, the District had no formal policy of rehiring temporary employees on the basis of seniority.

Before the end of the fall semester, most of these employees received a tentative assignment, indicating an offer of a possible spring schedule. These assignments varied in form but all were explicitly tentative, all referred explicitly or implicitly to the possibility that an assignment might be reduced or eliminated if the program's funding was cut. The District's

official assignment form indicated that "employment is contingent upon adequate class enrollment." In addition, a temporary employee could lose a class if he or she was "bumped" by a regular tenured instructor whose class did not achieve minimum enrollment.

The Superior Court stated, and the Court of Appeals upheld, that "it is clear that all notices of potential assignment given to petitioners were contingent on adequate enrollment, funding and the approval of the District's Board of Governors. The District retained the right to cancel the assignment of any of the petitioners if 15 students did not enroll in his or her class or if he or she was bumped by a tenured teacher whose class did not fill, and of withdrawing the assignment for financial or programmatic reasons. The clear language of section 1253.3(g) provides that offers or assignments that are contingent on enrollment or funding or program changes do not provide reasonable assurance."

The Court continued, "the Unemployment Insurance Appeals Board in both cases concluded that, although all assignments given to the claimants were contingent on funding, enrollment and program changes, the claimants' past history of employment gave them reasonable assurance of continued employment. This conclusion is not supported by the facts or the applicable law. Petitioners were part-time temporary employees with no seniority rights. The District had no duty to rehire them on the basis of their prior service. Their longevity of employment had no effect on the contingencies expressed in their assignment."

The finding in the Cervisi v. CUIAB case is that an offer of work to temporary employees, that is contingent on enrollment, funding or program changes is not a bona fide offer of work and does not constitute reasonable assurance, and that past employment history as a temporary employee does not negate the contingent nature of the offer of work.

The provisions of Cervisi only apply to a between terms recess period. There can be no contingency factors applied to a within terms recess period. Generally, enrollment, funding, and program changes do not occur within a term.

2. Economic Terms and Conditions

For reasonable assurance to exist, the economic terms and conditions of the job offered in the second period cannot be substantially less than the terms and conditions for the job in the first period.

When determining whether reasonable assurance exists, the economic terms and conditions of the job offered in the new year or term must be reasonably similar to those of the individual's employment in the preceding year or term. Section 1253.3 may not apply if there has been a substantial

change from the previous year. A change in job title, number of hours or hours worked, or wages may all be considered when determining a change in economic terms and conditions.

A change from traditional academic year employment to year-round academic year employment or vice versa, is not a change in economic terms and conditions. The California Education Code stipulates the number of days that constitute a school year. Full-time school employees work the same number of days during the academic year whether on a traditional academic year, or a year-round academic year, therefore, there is no reduction in the terms of employment based on the change in the type of academic year.

In terms of a reduction in wages, the Department defines "substantial" as a 20 percent reduction in pay based on the CUIAB finding in P-B-124 (1972). While that decision was in reference to a voluntary quit due to a reduction in pay, not reasonable assurance, the Board determined that a pay reduction of 20.96 percent was substantial enough to give the claimant good cause to quit. Therefore, in the case of reasonable assurance, the department applies the same logic. A reduction in wages of 20 percent or more would make the offer of reemployment substantially less in the terms and conditions of employment.

a. Board of Education of the Long Beach Unified School District, v. California Unemployment Insurance Appeals Board (1984) 160, Cal. App .3d 674 (hereinafter referred to as Long Beach):

   In this case, the Court of Appeal addressed the issue of whether a substitute teacher has reasonable assurance. While this court decision deals with a substitute teacher, the reasoning behind the decision would apply to any substitute school employee, professional or nonprofessional.

   The Court of Appeal held that the claimant did have reasonable assurance and therefore was not eligible for UI benefits during the recess period pursuant to CUIC Section 1253.3.

   The claimant was employed by the Long Beach Unified School District during the 1979-1980 school year as a substitute teacher. He last worked on June 11th. On or about June 16th he received a form letter from the District addressed to substitute teachers who had worked for the District during the 1979-1980 school year. The letter thanked the substitute for his or her services and offered him or her the opportunity to work as a substitute in the coming school year. It also contained a detachable form to be returned indicating whether he or she would be available for substitute teaching during the 1980-1981 school year.

MISCELLANEOUS

School Employee Claims

On July 2, the claimant returned the form to the District indicating that he would be available for substitute teaching the 1980-1981 school year.

On August 8, 1980, the District mailed another form letter to the claimant. The letter was addressed to "Substitute Teachers" and advised the recipient that he or she had been selected to serve as a substitute teacher in the 1980-1981 school year. The letter also stated: "Substitute teachers are given no assurance of employment. However, calls are rotated as equitably as possible in the best interest of the school district. Because the work of substitute employees is only from day to day, their services are used as needed."

The claimant filed a claim for benefits and was disqualified because he had reasonable assurance of returning to work following the recess period. The claimant appealed the determination, and an ALJ affirmed the Department's disqualification. The claimant appealed the ALJ decision and the Board reversed the decision, issuing P-B-419. The Board held the claimant was eligible for benefits during the recess period because he did not have reasonable assurance to return to work following the summer recess period. The Board based its decision on a sentence in the District's letter, which stated that substitute teachers are given no assurance of employment. The Board held there was no offer of future work, no contract for continuing services, and no commitment by the District to provide such work in the Fall. The Board cited the tenuous nature of a substitute teacher’s employment, including the insecurity, impermanence, and indefiniteness inherent in such employment.

The District filed a petition for a Writ of Mandate, and the superior court held that the claimant did have reasonable assurance and was subject to the between terms denial. The superior court concluded that the Board's reliance on the tenuous and impermanent nature of substitute employment and on the fact that the claimant as a substitute "acquired no vested or protected right to continuous employment" and that "he was not subject to termination since his job ended at the conclusion of each school day," was irrelevant to determining whether an individual has reasonable assurance.

The Board appealed from the superior court's decision. The Court of Appeal affirmed the decision of the superior court, stating "There is nothing in Section 1253.3, which sets as criteria the tenuous nature of a substitute teacher's position as a basis for determining the reasonable assurance issue." The Court of Appeal cited the claimant's employment history with the District and found no evidence that his situation would change in the post recess period. Further, the Court of Appeal stated "Nor does the sentence in the District's form letter sent to

MISCELLANEOUS

School Employee Claims

> Mr. Smith (and all substitute teachers) on August 8, 1980, which states 'Substitute teachers are given no assurance of employment,' literally construed, automatically operate to circumvent or nullify the unambiguous statutory language of Section 1253.3. This sentence, reasonably construed in light of the whole record, merely advised the recipient of the 'realities of the situation' applicable to substitute teaching employment. It merely cautions that for a substitute teacher, there can be no absolute guarantee of work."

In summary, Board of Education of the Long Beach Unified School District, v. CUIAB states that while a substitute teacher's employment may be tenuous, the substitute teacher has reasonable assurance to return to work when the work offered in the new term is essentially the same as the work performed in the prior term. The tenuous nature of the work is not a factor when determining reasonable assurance when there is a history of work that has not changed over time. In other words, following a recess period, the substitute school employee returns to on-call status subject to be offered employment on an as needed basis. There is more than a possibility that the claimant will return to work as the employer is required to maintain a pool of substitute employees.

The provisions of Long Beach hold true provided the substitute is offered essentially the same employment in the second academic year or term as in the first. If the substitute is retained, and the employer indicates the amount of work will be substantially less in the second year, then, Long Beach would not apply. For instance, due to budgetary restrictions the school is cutting back on the number of classes being scheduled. The permanent teachers who usually teach those classes will be added to the substitute pool, and have priority over the substitute teachers when assignments are offered. The Department's fact-finding establishes that based on the addition of the permanent teachers to the substitute pool, the substitute will be offered substantially fewer days of work in the second academic year than was worked in the first year. The substitute employee would be considered to not have reasonable assurance, and the disqualifying provisions of CUIC 1253.3 would not apply. The claimant would be eligible for UI benefits based on school employment during the between terms recess period.

b. P-B-461 – Change in Economic Terms/Conditions

> In Precedent Benefit decision P-B-461 (1988), the Board held that the claimant did not have reasonable assurance because the economic terms and conditions of the employment offered to the claimant in the new school year were not reasonably the same as those conditions in the previous school year and, in fact, were substantially less.

MISCELLANEOUS

School Employee Claims

The claimant in this case was a full-time tenured teacher. She was employed by the Beverly Hills Unified School District for three years as a Spanish language teacher. She worked for the District for three years, and her employment terminated on June 19, 1987.

In March 1987, the District notified the claimant that due to budgetary cutbacks, the District was reducing services and the claimant's position would be abolished. The District also notified six other tenured teachers that their positions were being terminated.

After a formal hearing, the District notified the claimant and the other tenured teachers that they were terminated effective June 19, 1987, the end of the school year.

Since she had been a tenured teacher, the claimant had certain reemployment rights with the District under the provisions of the Education code, as did the other tenured teachers who had been terminated.

On August 5, 1987, the District notified the claimant that she had been placed on the substitute teacher list. The District informed the claimant that she would receive her regular pay rate when she worked as a substitute only if she worked 21 days or more within a 60-day period. If she worked less than that, her rate of pay as a substitute would only be $65 per day, a substantial reduction in pay.

Because the claimant's teaching expertise extended only to one subject and because several other contract teachers had been placed on the substitute teacher list as well as some 20 other substitute teachers, the chances of the claimant being called to substitute on any regular basis, or at all, could not be determined.

The Board held that the claimant did not have reasonable assurance, stating the claimant began the fall term in 1987 with no assurance if or when she would be called to work. The Board also stated, "The claimant was at best assured of employment at a reduced pay rate and at a significantly reduced frequency of calls for work."

To summarize P-B-461: The claimant was a full-time teacher whose position was eliminated. While she was offered work in the next school year as a teacher, it was as a substitute teacher with little probability of work. The terms and conditions of employment in the second year were substantially less than in the first year, therefore, the claimant did not have reasonable assurance to return to work.

P-B-461 would not apply to the full-time teacher who is offered a long-term substitute contract teaching in the same subject matter. In this case the

claimant is a full-time teacher who is told that the full-time teacher contract will not be renewed, but is offered a one-year contract as a long-term substitute teacher. The Department verifies with the employer that the long-term substitute will be replacing a permanent teacher who is on a leave of absence and is expected to return to work at the end of the leave of absence. The claimant's contract guarantees the same number of hours worked as previously worked as a full-time teacher, and the rate of pay is the same. The claimant is determined to have reasonable assurance under CUIC Section 1253.3. The job duties and pay are essentially the same as a long-term substitute compared to the former full-time teaching position.

c. P-B-431 - Work Reduction Applies Only to the First Year

P-B-431 (1982) establishes the Board's decision that the loss of customary work as discussed in P-B-412 and P-B-417 applies only in the year the reduction occurs.

P-B-431 involves a group of claimants who were secretaries and clerks for a school employer and filed for UI benefits for each summer in 1978, 1979, 1980, and 1981. The Board heard the case in regard to the claims filed for the summer of 1981. The claimants filed for UI for the summer of 1981 and were found not eligible as they had reasonable assurance to return to work and were in a recess period. The decision was appealed and the Administrative Law Judge reversed the Department's decision. The Department and the employer appealed to the Board. The Board upheld the Department's original decision and ruled the claimants ineligible under CUIC Section 1253.3.

The employees had worked for the employer on a 12-month basis until 1978. In the summer of 1978, their employment was reduced from 12-months to 11-months, and they were considered to be laid off for one month and collected UI benefits. In 1979 they were laid off again, with a further reduction in employment from 11-months to 10-months. Again they filed for and were paid UI benefits for the period they were laid off. In the summer of 1980, the work year remained at 10 months and the employees again filed for UI and were paid benefits for the summer of 1980. In the summer of 1981, the employment contract agreed upon was that the employees were 10-month employees.

The Board reasoned in P-B-431 that the claimants were in a recess period and had reasonable assurance to return to work based on the fact that there was no cancellation of agreed upon summer work as no such commitment was ever made, and CUIC Section 1253.3 is applicable to the claims for benefits for the summer of 1981. The Board stated, "We do not believe that once a school employee has been employed on a 12-month basis and the contract is thereafter

changed that the employee will always remain entitled to benefits during the recess period. Thus we distinguish and limit Appeals Board Decision No. P-B-417 to those cases involving the year in which the change in employment conditions takes place."

The terms and conditions of employment did not change from the 10-month work year in 1980 to the 10-month work year in 1981, the claimants had been given a date to return to work for the Fall term of 1980, it was determined the claimants were in a recess period, had reasonable assurance to return to work in the same or similar capacity, and were therefore ineligible under CUIC Section 1253.3.

d. Crossover Situations

The term "crossover" refers to a situation where an individual performing services for an educational institution in one capacity crosses over to the other capacity during a recess period. This would occur, for instance, when an individual who works in a professional capacity in the first term, works in a nonprofessional capacity in the second term or vice versa. A crossover is a change in the terms and conditions of employment. A crossover can be a change in economic terms and conditions of employment, which would nullify an offer of reasonable assurance if the terms and conditions of employment are substantially less in the second period.

The U.S. DOL has given the states guidelines that address the issue of crossovers.

i. Crossover: Job Duties

When the change occurs during a recess period within a term (i.e., winter/spring vacation), the provisions of CUIC Section 1253.3 for denial of benefits during the recess period apply. The claimant would be considered to have reasonable assurance to return to work at the end of the recess period, even though the work will be in a different capacity after the vacation (within term) recess period. However, if the "crossover" occurs during a recess period between terms (i.e., summer recess, semester or quarter break), there is no reasonable assurance of reemployment due to changes in the terms and conditions of employment and therefore no denial of benefits can be assessed under CUIC Section 1253.3, if the crossover changes the terms and conditions of employment to be substantially less than the first period. However, if the terms and conditions of employment are the same or similar, even though the crossover changes the terms and conditions of employment, there would be reasonable assurance to return to work and the disqualifying provisions of CUIC Section 1253.3 would apply.

ii. Crossover: Employer Type

There can be no denial of benefits under CUIC Section 1253.3 when the crossover is a change in the type of educational employer the individual works for before and after the recess period. For example, the claimant worked as a teacher in the public school in the first term, but will be working as a teacher for a nonprofit, private school in the new term. The first employer is a public entity, the second is a nonprofit organization. In this situation, in order to establish that there is reasonable assurance of reemployment in the same or similar capacity, the type of employer must be the same for the first and second terms, or before and after the recess period if the change occurs within the term. Therefore, the claimant would be eligible for UI benefits under CUIC Section 1253.3 during the recess period, either within the term or between the terms, if there is a change in the type of employer for which the claimant works.

3. Professional or Nonprofessional School Employee

The Department must distinguish between professional and nonprofessional school employees due to requirements in CUIC Section 1253.3, which have different applications relating to the type of work being performed.

a. Professional School Employee

Section 1253.3(b) states in part:

> Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any entity as defined by Section 605, with respect to service in an instructional, research, or principal administrative capacity for an educational institution are not payable…if the individual performs services in the first academic years or terms and if there is a contract or a reasonable assurance that the individual will perform service for any educational institution in the second of the academic years or terms.

MISCELLANEOUS

School Employee Claims

Some examples of professional school employees are:

Associate Dean	Office Manager
Board of Director	School President
Business Manager	Principal
Assistant Principal	Head Nurse
Chief Librarian	Superintendent
Dean	Teacher
School Director	Substitute Teacher
Vice Principal	Athletic Coach

These job classifications are for individuals who are involved directly in teaching, research, or the administration of the school or school personnel on a management level.

An individual who has tenure or permanent civil service status is considered to have reasonable assurance of continuing employment if no notice of layoff or termination has been issued to the claimant by the school employer. Typically, if a layoff or termination notice is issued, it will be issued prior to the end of the school year. The notice must state that the claimant *will not* be reemployed, not that the claimant *may* not be reemployed. Whether or not the claimant has a written notice, fact finding must be done and the Department must verify with the employer that the claimant will not be reemployed in the following year or term.

A professional school employee, who has a contract for work with the school employer in regular, but not successive terms, has reasonable assurance to return to work after each recess period that occurs during the life of the contract. The claimant in this situation would not be eligible for UI benefits in any recess period while the contract is in effect. When the term of the contract is completed, the claimant would no longer have reasonable assurance to return to work.

Example:

A professional school employee has a contract to work during the spring semester in two successive academic years. The contract covers the 2005-2006 and 2006-2007 academic years.

The claimant begins work in the spring 2006 semester and requests UI benefits during the 2006 spring recess period. This is a within terms recess period. The claimant is disqualified under CUIC Section 1253.3 as the claimant is under contract to work the spring semester and will return to work when the 2006 spring recess ends.

MISCELLANEOUS

School Employee Claims

The claimant requests UI benefits again in June 2006, when the summer recess begins. This is a between terms recess period for the summer. The claimant is denied UI benefits during the 2006 summer recess period under CUIC Section 1253.3 because the claimant has a contract that states the claimant will return to work in the next regular, but not successive term which is the 2007 spring semester.

The claimant then applies for UI benefits during the winter recess period which began in the third week of December. This is a between terms recess period. As with the prior recess periods, the claimant is denied UI benefits during this recess period as well.

The claimant returns to work for the spring 2007 semester as agreed to in the contract. The claimant again requests UI benefits during the 2007 spring recess period. The claimant is disqualified during this recess period, under the same provisions as the 2006 spring recess. The claimant returns to work after the 2007 spring recess ends.

When the spring 2007 semester ends and the claimant has completed the terms of the contract, the claimant again requests UI benefits. The claimant requests UI benefits during the 2007 summer recess period. At this point, the contract is completed, and the claimant does not have a new contract. The claimant does not have reasonable assurance to return to work in the next term, and is eligible for UI benefits during the summer 2007 recess period.

b. Nonprofessional School Employee

Section 1253.3(c) states in part:

> Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any entity as defined by Section 605, with respect to service in any other capacity than specified in subdivision (b) for an educational institution shall not be payable…[when] there is reasonable assurance that the individual will perform the service in the second of the academic years or terms." However, if the individual was not offered an opportunity to perform the service for an educational institution of the second of the academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subdivision…

MISCELLANEOUS

School Employee Claims

CUIC Section 1253.3(b) does not contain the provision for retroactive payment of benefits for a professional employee. Therefore, retroactive payments of benefits are only applicable to the nonprofessional school or school supportive employee.

Some examples of nonprofessional school employees are:

Accounting Clerk	Noontime Aide
Bus Driver	School Nurse
Cafeteria Worker	Secretary
Clerk	Social Worker
Custodian	Teacher's Aide
Crossing Guard	Teacher's Assistant
Counselor	Teacher's Helper
Gardener	Vehicle Maintenance Worker
General Office Worker	Instructional Aide

c. Examples: Professional and Nonprofessional School and School Supportive Employees

i. Job performed is the determining factor, not job title:

In the following examples, all of these school employees have the job title of a Registered Nurse; one is considered a nonprofessional school employee (1253.3(c)), two are considered professional school employees (1253.3(b)), and one is a nonprofessional school supportive employee (1253.3(c)) based on the job duties that each performs.

Example 1:

A school nurse who is employed by the school district, provides first aid to students at the school, but does not teach a health class, is considered a nonprofessional employee (works in "any other capacity").

Example 2:

A school nurse who is employed by the school district, teaches health classes as part of the regular curriculum, and who also provides first aid to students, is a professional employee (provides educational instruction).

Example 3:

The head nurse who is employed by the school district, does not teach and holds an administrative position in the school district

supervising the other school nurses is a professional employee (works in a principal administrative capacity).

Example 4:

A nurse who is employed by a county (public entity) health agency who works at different schools on a rotating basis to provide first aid to students, but does not teach, is a nonprofessional school supportive employee (works in "any other capacity").

ii. Lunchtime Supervision

In both of the following examples, the employees of the school district supervise recess, one is a professional employee, and one is a nonprofessional school employee.

Example 1:

A classroom teacher at the elementary school, who also is required to supervise recess, is a professional employee (performs instructional service (1253.3(b)).

Example 2:

A teacher's aide, who also supervises recess with the teacher, is a nonprofessional employee. (1253.3(c) works in "any other capacity" both as a teacher's or instructional aide and supervising children during recess).

iii. Teachers Aide and Tutor

A teacher's aide/instructional aide, teacher's helper or assistant is a nonprofessional school employee. This individual works with students only under the direction of a teacher and provides services in "any other capacity," as defined by CUIC Section 1253.3(c).

A tutor is a professional school employee as this individual works directly providing educational instruction to the student, and therefore performs instructional services as defined by CUIC Section 1253.3(b).

iv. Substitutes

In the following examples, both school employees are substitutes. One is a professional, one is a nonprofessional.

School Employee Claims

Example 1:

A substitute teacher is a professional employee because he/she performs instructional services to an educational institution (1253.3(b)).

Example 2:

A substitute cafeteria worker is a nonprofessional employee because he/she provides services in "any other capacity" to an educational institution (1253.3(c)).

Even though substitute school employees do not work full-time, they are considered either professional or nonprofessional school employees depending on the work they perform under the same terms as a full-time employee.

4. Notification of Reasonable Assurance

A school employer must inform a nonprofessional school employee in writing within 30 days before the end of the first of the academic year or term whether or not there is a reasonable assurance of reemployment in the second academic year or term.

Section 1253.3(i) is paraphrased below:

> Any public school employer…, with respect to any individual performing a service in any other capacity [as specified in subdivision (c)]…for an educational institution, shall provide a written statement indicating the following to the individual no later than 30 days before the end of the first of the academic years or terms:
>
> (1) Whether or not there is a reasonable assurance of reemployment.
>
> (2) Whether or not it is stated that the individual has no reasonable assurance of reemployment, that the individual should file a claim for benefits at the close of the academic year or term.
>
> (3) If it is stated that the individual has reasonable assurance of reemployment, the written statement shall also inform the employee that he or she may file a claim for benefits and that the determination of eligibility for benefits is made by the Employment Development Department and not by the employer.

(4) If it is stated that the individual has reasonable assurance of reemployment, that the individual shall be entitled to a retroactive payment of benefits if the individual is not offered an opportunity to perform the services for the education institution for the second of the academic years or terms, if the individual is otherwise eligible and he or she filed a claim for each week benefits are claimed, and if a claim for retroactive benefits is made no later than 30 days following the commencement of the second academic year or term.

CUIC Section 1253.3(i) has no bearing on whether or not there is reasonable assurance to return to work. It is simply a notification requirement for the employer. Failure to send the notice as described in this section, does not negate reasonable assurance. The Department will investigate and determine reasonable assurance when it is established that the employer has notified the claimant, verbally or in writing, that the employer expects to reemploy the claimant in the next school year or term.

Further fact-finding is necessary when a claimant disputes an employer's contention that he or she has a reasonable assurance of returning to work following a recess period. The burden of proof is on the employer to establish that a bona fide offer of employment or reemployment was made. It must be established when the offer was made, that a person authorized to do so made the offer, and the manner in which the offer was communicated to the school employee.

5. Retroactive Payment of Benefits

As provided for in CUIC Section 1253.3(i), a nonprofessional school or school supportive employee may be eligible for retroactive payment of UI benefits for the recess period, if the offer of reemployment, or reasonable assurance, is withdrawn by the employer and the claimant does not return to work in the new term as expected. The claimant must certify for benefits for each week during the recess period, and meet all other eligibility requirements. The claimant must request the retroactive payment of benefits from the Department within 30 days of the beginning of the new term, or within 30 days of the withdrawal of the offer of reasonable assurance if reasonable assurance is withdrawn before the beginning of the new year or term. The Department notice of denial of benefits under the provisions of CUIC Section 1253.3 for the nonprofessional school employee must include a statement informing the claimant that if he/she does not return to work, he/she may be entitled to retroactive payment of benefits, that he/she must certify for benefits each week during the denial period, and to request the retroactive payment no later than 30 days after the end of the recess period.

MISCELLANEOUS

School Employee Claims

Retroactive payments are required when the "individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms," provided the individual filed a timely claim for compensation for each week that compensation was denied solely under the between terms denial provisions. The federal guidelines go on, stating "opportunity" must be construed as a chance to actually perform service in the academic year or term following the recess period. The opportunity for work must be bona fide or the denial of retroactive payment of benefits would not be valid.

In the case where a nonprofessional school employee is dismissed shortly after the beginning of the new term, whether the opportunity to work was bona fide may come into question. As an example, the claimant was a library aide who at the end of the school year was given a letter of reasonable assurance to return to work the following school year. The claimant returned to work in the new school year, worked for three days and on the fourth day was told her position was eliminated due to lack of funds. When the claimant filed for UI benefits and requested retroactive payment of benefits, the facts would need to support that the employer did not return the claimant to work for three days merely to avoid the claimant being paid retroactive benefits.

Generally, an individual does not know until the beginning of the new term that he or she will not be returning to work. The Department must verify with the school employer, either verbally or in writing, that the offer of the opportunity to work, (reasonable assurance) was withdrawn by the employer when the claimant requests retroactive payment of benefits. If it is known before the new term begins that the individual will not be returning to work, the individual may request retroactive payment of benefits before the new term begins, while the school employer is still in a recess period. It is appropriate to allow retroactive payment of benefits prior to the beginning of the new term in this case. The Department must verify with the school employer that there will be no opportunity to return to work when the new academic year or term begins, before retroactive payment of benefits can be allowed prior to the beginning of the new term.

In the case of a substitute nonprofessional school employee who was disqualified under CUIC Section 1253.3 during the recess period, if the claimant does not work during the first 30 days of the new term, the claimant may request retroactive payment of benefits. The Department must verify with the school employer that the claimant did not perform any services during the first 30 days of the new term, and that the employer had no work for the claimant during that time. Payment of retroactive benefits would be appropriate when it is determined that the claimant did not work during the first 30 days of the new term because the employer did not have any work for the claimant. Reasonable assurance for a nonprofessional substitute school employee is negated at the point where

the individual has not worked during the first 30 days of the term because the school employer did not have any work for that individual.

A claim for retroactive payment of benefits should be denied if the claimant was responsible for the failure to return to work, or the withdrawal of the offer of reasonable assurance. A claimant is not entitled to retroactive payment of benefits when the opportunity for reemployment is prevented by the claimant's action. For example, the individual has reasonable assurance of returning to work in her usual assignment as a secretary. She decides that she no longer wants to work as a secretary, and there is no other position available for her. She advised the employer two weeks before the beginning of the new term that she will not be returning to work after all. The "opportunity" to work was unfulfilled because of the claimant's action, not the employer's; therefore payment of retroactive benefits would not be appropriate. This may bring up issues regarding availability to work under CUIC Section 1253(c) and would create a separation issue under CUIC Section 1256, which would need to be addressed.

Whether or not an "opportunity was offered" is to be decided on the facts of each case. An individual is not to be denied retroactive payments of benefits when the opportunity offered was not bona fide or when the opportunity was offered under such conditions as to make its acceptance unreasonable. The conditions under which the opportunity was offered the individual should be compared to the conditions under which the opportunity was offered to other individuals similarly situated who returned to work.

a. Timely Claims for Retroactive Benefits

i. Weekly certification

Retroactive benefits are payable only for each week for which the claimant files a timely claim for compensation. The claimant is required to file a timely claim for each week of the denial period in the same manner and under the same conditions for timely filing as are applicable to any claim for a week of unemployment benefits. Issues regarding the untimely filing of weekly certifications for retroactive benefit payments are adjudicated under CUIC Section 1253(a) for school employee claims as they would be for any other UI claim.

ii Request for retroactive benefit payments

According to federal guidelines, the timeliness of the request for retroactive payment of benefits will be computed from the date it became clear that the claimant no longer had reasonable assurance to return to work. In the case where the claimant

receives written or verbal notice of withdrawal of the reasonable assurance, timeliness would be computed 30 days from the date the claimant received a letter or was otherwise notified. In the case where the claimant is not aware there would be no return to work until after the term begins, the claimant must request retroactive payment of benefits no later than 30 days after the beginning of the new term in which the claimant was supposed to return to work, but then did not. Good cause for an untimely request for retroactive benefit payments would be adjudicated under CUIC Section 1253(a) as it would be for any other untimely claim filing issue.

6. Reasonable Assurance Offered During the Recess Period

A claimant who initially has been determined to not have a reasonable assurance, will subsequently become subject to the provisions of CUIC Section 1253.3 when the claimant is given such reasonable assurance.

When the claimant is initially found eligible for UI payment during the recess period because there was no reasonable assurance to return to work with a school employer, and then is offered reasonable assurance while still in a recess period, an issue under CUIC Section 1253.3 exists. Continuing eligibility during the remainder of the recess period must be adjudicated at the time it becomes known the reasonable assurance to return to work now exists. Fact-finding regarding the terms and conditions of employment and whether the offer is bona fide must be done. The offer of reasonable assurance must be verified with the employer, either in writing or verbally. If it is determined the claimant now has reasonable assurance to return to work, a disqualification under CUIC Section 1253.3 would be assessed effective the Sunday of the week in which the claimant was notified of the offer. If the claimant was given the offer in writing, the disqualification would begin in the week the claimant received the written offer. If the offer was verbal, the disqualification would begin the week in which the offer was made and accepted. If the claimant declines the offer, there are potential issues under CUIC Sections 1257(b) and 1253(c) regarding a refusal of suitable work, and ability and availability to accept work, to be addressed.

7. Layoff, Quit or Discharge

There is a severance of the employer/employee relationship for a school or school supportive employee when the claimant is laid off, quit or discharged, or, for seasonal employees such as gardeners and coaches, if they have fulfilled their contract obligations.

MISCELLANEOUS

School Employee Claims

a. Quit or Discharge

The claimant's eligibility is dependent upon the reason for leaving the last employment as of the time of filing a claim for benefits. P-B-472 (1991) supported that there can be only one last employer, and only one separation from that employer.

In P-B-472, the claimant gave notice during the third week of May that he intended to leave his job effective June 29th. On May 29th, the employer informed the claimant his services were no longer required. The ALJ (citing P-B-259) held that two separation determinations were required, one at the point of discharge, and the other at the claimant's projected quit date. The Board disagreed and overruled P-B-259 by issuing P-B-472, stating "that there is nothing in CUIC Section 1256, or CUIC Section 1256.3 that would suggest that two determinations regarding the same claim filing might be warranted." While P-B-472 did not specifically address school or school supportive employees, it is relevant when addressing separations from employment and school recess periods.

There is a separation issue under CUIC Section 1256 when a permanent school or school supportive employee has an offer of reasonable assurance to return to work at the end of the recess, and does not return, either due to the claimant's decision (a voluntary quit) or the employer terminating the claimant's employment (misconduct). When the separation occurs, reasonable assurance to return to work no longer exists. Therefore, there is no issue under CUIC Section 1253.3. The claimant's eligibility will be determined under CUIC Section 1256.

There is no separation issue under CUIC Section 1256 when a **substitute** employee completes the last assignment, has reasonable assurance to return to work (is on a substitute list), and then does not return to work. However, potential issues of the claimant's ability and availability to work under CUIC Section 1253(c) may exist and should be addressed. A suitable work issue under CUIC Section 1257(b) would need to be addressed if an offer of work was made, and the claimant refused, after the beginning of the new school year.

Example: 1:

The claimant stopped working on June 5th, when the school closed for the summer recess. He had reasonable assurance of returning to work on September 7th, when school resumed. He filed his claim on June 10th. The claimant was disqualified under Section 1253.3. On

MISCELLANEOUS

School Employee Claims

June 18th, the claimant submitted his resignation to the school district and reported to reopen his claim.

The cause of the claimant's unemployment at the time he filed his claim on June 10th, was the school closure for the summer recess. Subsequently, during the recess period, the claimant notified his employer that he quit. A separation occurred on June 18th, when the claimant submitted his resignation, and the offer of reasonable assurance to return to work no longer exists. The CUIC Section 1253.3 disqualification is lifted, and the CUIC Section 1256 issue is adjudicated based on the reason the claimant resigned effective June 18th. If disqualified, the effective date of the CUIC Section 1256 disqualification is the Sunday of the week preceding June 18th, the week in which the separation occurred.

Example: 2:

The claimant stopped working on June 5th, when the school closed for the summer recess. The claimant had reasonable assurance to return to work on September 5th. On July 8th, the claimant submitted her resignation to the school employer and reported to file her claim.

The cause of the claimant's unemployment at the time she filed her claim on July 8th, was her resignation from school employment. There is no issue under CUIC Section 1253.3. There is a separation issue under CUIC Section 1256. If disqualified, the effective date is the Sunday preceding July 8th.

Example 3:

The claimant is a permanent school employee on an approved leave of absence. The leave began May 1st, and ends at the beginning of the next school year on September 7th. The end of the current school term is June 11th. On June 15th the claimant files a UI claim.

Adjudicate the CUIC Section 1253.3 issue. The fact that the claimant is on an approved leave of absence does not break the employer/employee relationship since the claim is filed during the school recess period. The claimant has reasonable assurance to return to work on September 7th when the new school year begins.

Example 4:

The claimant is a permanent school employee on an approved leave of absence. The claimant files a UI claim before the school recess period begins and while on the leave of absence.

MISCELLANEOUS

School Employee Claims

The reason for the claimant's unemployment is due to the leave of absence, the school employer is not in a recess period, therefore, the claimant's eligibility is adjudicated under CUIC Section 1256. There is no issue under CUIC Section 1253.3.

b. Layoff or End of a Contract/Agreement

There is no issue under CUIC Section 1253.3 if a school employee completes all available work and is laid off prior to the end of a current contract, or when the claimant completes the term of the contract.

Example 1:

The Junior High School's basketball coach has a contract to work only during the basketball season. The coach works until the end of the basketball season, which completes the term of the contract. The contract for the next season will not be negotiated until after the next school year begins. The coach files a UI claim the week following the last day worked.

The claimant is laid off due to lack of work. Since a new contract has not been offered, the claimant does not have reasonable assurance to return to work. There is no issue under CUIC Section 1253.3 because the claimant does not have reasonable assurance to return to work.

Example 2:

The claimant is a substitute employee (professional or nonprofessional). The claimant completes her last assignment on May 30th. The claimant requests UI benefits during the recess period which begins on June 18th. The claimant is on the substitute list to be called for work during the next school year which begins on September 4th. On July 5th, the claimant sends a letter to the employer stating she is moving out of the area and will not be returning to work in the new school year.

The claimant was laid off due to lack of work when her last assignment ended on May 30th. The claimant had reasonable assurance to return to work when the recess period began. The claimant filed her UI claim on June 15th and was determined ineligible under CUIC Section 1253.3 as she had reasonable assurance to return to work. The claimant requested reopening of her claim on July 16th after her move was completed. There is no separation issue under CUIC Section 1256 as the claimant completed her last assignment. The 1253.3 disqualification is lifted. There may be an issue under CUIC Section 1253(c) regarding the claimant's availability and ability to work in her usual occupation.